**PUBLIC MATTER — DESIGNATED FOR PUBLICATION**

FILED January 6, 2004

# REVIEW DEPARTMENT OF THE STATE BAR COURT

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| **In the Matter of** | ) | **Case Nos: 95-O-10829; 99-O-13251 (Consolidated)** |
| **RONALD ROBERT SILVERTON,** | ) | |
| **A Member of the State Bar.** | ) | **OPINION ON REVIEW** |

In this consolidated original disciplinary proceeding, both respondent Ronald Robert Silverton and the Office of the Chief Trial Counsel of the State Bar (State Bar) have requested review of the decision filed by the hearing judge on May 31, 2002, and modified by order filed on July 5, 2002, (2002 decision), in which she recommended that respondent be placed on two years' stayed suspension and on two years' probation with conditions, which include a sixty-day period of actual suspension that will continue until respondent makes restitution to three clients.[1]

Respondent contends error in the hearing judge's findings of culpability and, in the alternative, contends that her discipline recommendation is excessive and should be reduced to no more than an admonition, which is the lowest level of discipline we may impose or recommend. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(a).)[2] In stark contrast, the State Bar contends that the recommended discipline is

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[1]There has been a delay in the review process in this proceeding, but we note that much of the delay was attributable to respondent's multiple requests for extensions of time to file his appellate briefs, which we granted for good cause shown.

[2]All further references to standards are to this source.

insufficient and that the appropriate discipline would be disbarment, the greatest level of discipline we may recommend. (Std. 1.4(d).) Both parties raise multiple contentions in their lengthy briefs on review. Any contention not expressly addressed in this opinion has been considered and rejected as meritless.

Upon independent review of the record (Cal. Rules of Court, rule 951.5; Rules Proc. of State Bar, rule 305(a); *In re Morse* (1995) 11 Cal.4th 184, 207), we recommend two years' stayed suspension and three years' probation on conditions including a sixty-day period of actual suspension.

**JURISDICTION**

Respondent was originally admitted to the practice of law in the State of California in June 1958. In 1972, he was convicted of (1) one felony count of conspiracy to obtain money by false pretenses and to present a fraudulent insurance claim and (2) one felony count of soliciting another to commit or join in the commission of grand theft. Because of those convictions, respondent was disbarred in *In re Silverton* (1975) 14 Cal.3d 517. Thereafter, he was reinstated to the practice of law in October 1992 and has been a member of the State Bar since that time.

**CASE HISTORY**

The notice of disciplinary charges (NDC) in State Bar Court case number 95-O-10829 was filed in April 1997. In that NDC, the State Bar charged respondent with a combined total of five counts of misconduct in three separate client matters. Counts 4 and 5 were dismissed by the hearing judge before trial because he concluded that they failed to state disciplinable offenses. Counts 1, 2 and 3 were tried in June 1998. Thereafter, on May 5, 1999, the hearing judge filed a decision (1999 decision) in which he found that respondent was not culpable of the misconduct charged in counts 1 through 3. Accordingly, the hearing judge dismissed the entire proceeding. However, on May 21, 1999, the State Bar timely filed with this court and served on respondent a request for review of the 1999 decision and the pretrial dismissal of counts 4 and 5.

On independent review of the hearing judge's decision and pretrial dismissals, we determined that the allegations in count 4 of the NDC properly charged a violation of rule 3-300

of the Rules of Professional Conduct of the State Bar, [3] and that, if proved, they would establish a violation of rule 3-300.[4] In addition, we determined that the allegations in count 5 of the NDC presented factual issues that, if found true, would permit the court to find the agreement relating to the compromise of medical charges to be unconscionable under rule 4-200. (Rule 4-200 proscribes entering into agreements for, charging, or collecting unconscionable fees.) Accordingly, we reversed the hearing judge's dismissal of counts 4 and 5 and remanded them to the hearing department for a trial to determine culpability and, if culpability were found, to determine the appropriate level of discipline to be imposed. (*In the Matter of Silverton* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252, 255-259 [*Silverton I*].) In addition, we disagreed with the hearing judge's dismissal of count 1and independently found respondent culpable of violating rule 3-300 as charged in that count. (*Id*. at pp. 260-262.) Accordingly, we remanded count 1to the hearing department for a trial on the issue of discipline. (*Id*. at p. 262.) Finally, we agreed with and adopted the hearing judge's dismissal of counts 2 and 3. (*Ibid*.)

Before the trial on remand of case number 95-O-10829, the State Bar initiated a second disciplinary proceeding against respondent by filing a NDC in State Bar Court case number 99-O-13251 in August 2001. In that NDC, the State Bar charged respondent with two counts of misconduct in a single client matter. Case numbers 95-O-10829 and 99-O-13251 were consolidated pursuant to agreement of the parties and tried in January 2002. The assigned judge

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[3]Unless otherwise noted, all further references to rules are to these Rules of Professional Conduct.

[4]Rule 3-300 provides that an attorney "shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied: [¶] (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and [¶] (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and [¶] (C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition."

who presided over this consolidated proceeding (*Silverton II*) and who filed the 2002 decision is not the same judge who presided over case number 95-O-10829 and who filed the 1999 decision.

In this consolidated proceeding, the hearing judge found respondent culpable on two charged counts of violating rule 3-300 and on two charged counts of violating rule 4-200. In addition, she found respondent culpable of two uncharged violations of rule 3-300, which she considered only for purposes of aggravation. (See, e.g., *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36 [uncharged misconduct may not be used as an independent ground of discipline, but may be considered, in appropriate circumstances, for other purposes such as aggravation].) Furthermore, she found aggravation based on multiple acts of misconduct and on harm to clients. She did not find any mitigating circumstances. Of course, in making her discipline recommendation, the hearing judge considered the rule 3-300 violation that we independently found and remanded for trial on discipline in *Silverton I*.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Before trial in *Silverton II*, the parties stipulated to virtually all of the undisputed facts contained in their respective pretrial statements.[5] In addition to adopting these stipulated facts, we adopt the findings of fact that we previously made in *Silverton I*, 4 Cal. State Bar Ct. Rptr. at pages 259-262. Finally, we adopt some of the findings and conclusions that the hearing judge made in the 2002 decision and reject others, as discussed *post*.

Respondent testified that, between his reinstatement in late 1992 and the sale of his practice in either late 2000 or early 2001, he had a "[high] volume operation" practice in which he handled about 1,000 cases a year (or a combined total of about 8,000 cases). According to respondent, about 70 percent of his cases were personal injury cases that arose out of automobile accidents. The remaining 30 percent of his cases consisted primarily of other types of personal injury cases and workers' compensation cases.

In an apparent contradiction of his own testimony about handling 1,000 cases a year, respondent testified that, during this time period, he only "had one [new] client a day coming in."

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[5]See the hearing judge's January 10, 2002, minute order.

We, however, reject that testimony because it is completely inconsistent with his testimony that he (1) employed four "intake" people, (2) received referrals "from 40 different attorneys," (3) had a monthly overhead of $30,000 and (4) employed about 7 attorneys and an office staff of about 20. It is also inconsistent with respondent's testimony describing the Kelly matter as just "one out of 10,000 cases."

Respondent testified that he is one of the *top experts anywhere* in handling automobile accident, personal injury cases. In addition, he testified that, because the insurance companies knew that his law office would "spend $10,000 to win 1 cent" for a client, they settled cases with him that they would not settle with other attorneys. According to respondent, because of this "fact," other attorneys routinely asked him to associate in cases they were unable to settle. However, respondent did not present any evidence to corroborate any of this testimony.

**The Kelly and de Jonge Matters (Counts 4 & 5 – Case Number 95-O-10829)**

**Findings of Fact**

On November 6, 1995, Wilma Kelly (Kelly) and Verna de Jonge (de Jonge) hired respondent to represent them and their respective children LaToya Kelly and Rene de Jonge in regards to personal injuries they suffered in an automobile accident the previous day (i.e., November 5, 1995). Kelly and de Jonge executed separate contingent fee retainer agreements, each of which was signed on behalf of the Silverton Law Office by respondent's secretary (or legal assistant) Daisy Garcia. Respondent did not explain the agreements to Kelly or de Jonge. Nor was he present when they and secretary Garcia signed them.

Each agreement (1) provided that respondent was hired to "represent them as their attorney at law in a cause of action against all responsible parties and/or whomever may be liable arising out of an auto accident that occurred on 11/5/95" and (2) granted respondent "a special power of attorney to settle or compromise any claim on client's behalf which, in [respondent's] *sole* judgment is fair and reasonable." (Italics added.) Moreover, each agreement provided that respondent was to receive, as his attorney's fees for the services described in the agreements, "[one-third] of any [and] all amounts recovered by way of a settlement or otherwise, if the matter is settled before suit or request for arbitration is filed, and 40% after suit or request for arbitration

is filed." The agreements also provided that respondent "may, at his sole discretion, compromise any medical bill, and . . . retain *as an additional fee* the difference between the compromised amount and the bill for medical services, if anything." (Italics added.) Further, the agreements provided that respondent's fee was to be taken from the total amount recovered and that any costs and certain liens[6] were then to be deducted, with any remaining balance being the "client's net recovery."

From November 7, 1995, which was two days after the accident, through early January 1996, the Kellys and the de Jonges received chiropractic and physiotherapy treatments from the same chiropractor.[7] Then, on January 16, 1996, their chiropractor sent respondent individual detailed billings for each of the Kellys and the de Jonges. By early February 1996, respondent settled all of the Kellys' claims for $12,000 and all of the de Jonges' claims for $12,000.[8] Because the Kellys' and the de Jonges' claims were settled before respondent filed suit or requested arbitration, respondent was entitled to a one-third fee in the Kelly and the de Jonge matters.

**The Kelly Settlement**

Respondent's one-third fee in the Kelly matter was $4,000 (one-third of the $12,000 total recovery). After respondent deducted his $4,000 fee and investigation costs of $120 from the

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[6]There is no evidence of any doctor's or medical care provider's liens in any of the client matters in this consolidated proceeding, and respondent admits in his opening and responsive brief on review filed March 12, 2003, that there were no such liens.

[7]Respondent testified that he could not recall whether he had ever met the Kelly and de Jonges' doctor. He further testified that he had "doctors coming up to [his] office with boxes of chocolate all the time to meet me because they wanted referrals."

[8]There is no evidence in the record regarding the compromise of a minor's claim pursuant to Probate Code section 3500 in any of the client matters in this proceeding. Therefore, we do not address that issue.

$12,000 total recovery, the net recovery remaining for the Kellys was $7,880 ($12,000 less $4,000 less $120), which was not enough to pay their medical bills of $7,900.[9]

According to respondent, he wanted to make sure that the Kellys got something out of the settlement so that they would be happy with his representation. In that regard, when respondent met with Kelly in February 1996 to review the $12,000 settlement offer and go over the disbursement of the settlement proceeds, he proposed to increase the Kellys' share of the settlement by offering to pay them $2,500 out of his fees for the right to compromise their medical bills. Respondent explained to Kelly that he was already authorized, by the retainer agreement she signed in November 1995, to compromise the medical bills and to keep any savings. (See exhibit 1 (case number 95-O-10829), at p. 10.)[10] Kelly accepted respondent's offer, and he paid her $2,500.

Respondent repeatedly testified that his post-settlement agreement with Kelly to compromise the medical bills in exchange for $2,500 was memorialized in a written "authorization to compromise medical bills" that was signed by Kelly. According to respondent, that authorization was identical to the one in the Belenki matter, which we describe *post*, except that Kelly's authorization did not include a provision reciting that she had been informed of her right to seek independent legal advice. The hearing judge rejected respondent's testimony and found that respondent's post-settlement agreement with Kelly was not in writing. We agree and, therefore, reject respondent's testimony and adopt the hearing judge's finding that the post-settlement agreement was not in writing.[11] (See Rules Proc. of State Bar, rule 305(a) [review department gives great weight to hearing judge's credibility determinations].)

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[9]In his March 28, 1996, letter to Kelly, respondent incorrectly states that the Kellys' medical bills total $7,950.

[10]Even though the hearing judge consolidated the cases in this proceeding, we must include a case number reference in our cite to this State Bar exhibit 1 because the State Bar introduced two exhibits that it identified as "exhibit 1."

[11]For analysis of the hearing judge's finding, see footnote 12, *post* page 9.

After the settlement, respondent got the doctor to reduce the Kellys' bills from $7,900 to $4,388, for a saving of $3,512. Then, in February 1996, after she learned that respondent obtained such a large reduction in the medical bills, Kelly told respondent that she wanted more money, and respondent paid her an additional $500 on February 14, 1996. According to respondent, he paid Kelly the additional $500 out of the empathy he had for her over her financial plight.

After respondent collected his $4,000 in attorney's fees, deducted the $120 in investigation costs, paid the $4,388 in medical bills, and paid $3,000 ($2,500 plus $500) to the Kellys, there remained a balance of $492 from the $12,000 settlement proceeds. That $492 represented respondent's share of the $3,512 in savings on the reduced medical bills. Or, stated differently, the $492 that respondent realized from his post-settlement agreement with Kelly was in addition to his legal fees of $4,000 for a total of $4,492.

**The de Jonge Settlement**

Just as in the Kelly matter, respondent's attorney's fees in the de Jonge matter were $4,000 (one-third of $12,000). After respondent deducted $4,000 in fees and $120 in investigation costs, the net recovery remaining for the de Jonges was $7,880 ($12,000 less $4,000 less $120). Then, when taking the de Jonges' medical bills of $5,873 into account, their recovery was $2,007 ($7,880 less $5,873).

When respondent met with de Jonge in February 1996 to review the settlement offer and to go over the disbursement of the $12,000 in settlement proceeds, he proposed to increase the de Jonges' ultimate recovery from $2,007 to $2,500 by offering to pay her an additional $493 for the right to compromise the medical bills and keep any savings. Respondent explained to de Jonge that, by this process, he would assume responsibility for the medical bills and she and her daughter together would receive a total of $493 more than they would have gotten under the original retainer agreement. Respondent reminded de Jonge that, under the retainer agreement she signed in November 1995, he was authorized to compromise the medical bills and to keep any savings. (See exhibit 1 (case number 95-O-10829), at p. 2.) De Jonge accepted, and respondent paid her $2,500 ($2,007 plus $493).

Just as he did in the Kelly matter, respondent repeatedly testified that his post-settlement agreement with de Jonge to compromise the medical bills in exchange for $493 was memorialized in an "authorization to compromise medical bills" that was signed by de Jonge. The hearing judge again rejected respondent's testimony and found that the agreement was not in writing, and we adopt her findings.[12]

Finally, the record is silent as to whether respondent was able to compromise any of the de Jonges' medical bills. Accordingly, we are unable to ascertain whether respondent received any additional benefits in the de Jonge matter over and above his $4,000 in attorney's fees, if any.

**Conclusions of Law**

**Count 4 (Rule 3-300)**

The hearing judge found that respondent willfully violated rule 3-300 as charged in count 4. The hearing judge first found that rule 3-300 applied to the provision in the retainer agreements that permitted respondent to compromise the Kellys' and the de Jonges' medical bills and to keep any savings as an additional fee (hereafter challenged provision) because she opined that it conveyed to respondent an " 'ownership, possessory . . . or other pecuniary interest' in his

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[12]The post-settlement agreements respondent made with Kelly and de Jonge to purchase the right to negotiate reductions in their medical bills and to keep any negotiated savings are sometimes (1) individually referred to as a post-settlement agreement and (2) jointly referred to as the post-settlement agreements. The record supports the hearing judge's rejection of respondent's testimony that the post-settlement agreements in the Kelly and de Jonge matters were in writing. First, respondent's testimony is self-serving. (Evid. Code, § 780, subd. (f).) Second, respondent admitted that he cannot recall exactly what happened in the Kelly and the de Jonge matters almost six years later. (Evid. Code, § 780, subd. (c).) Third, respondent's testimony on these issues is inconsistent with the documentary evidence. For example, when respondent wrote the letters to Kelly and de Jonge on March 8, 1996 (exhibit 1 in case number 95-O-1082 at pp. 2-3, 10-11), he did not mention any written authorization or written post-settlement agreement. Instead, he stated only that, when Kelly and de Jonge accepted the $12,000 settlements and approved respondent's proposed methods of disbursing the $12,000 settlement payments, he explained to them (1) that the retainer agreements already permitted him to compromise their medical bills and to keep any savings and (2) that they agreed respondent could compromise their medical bills and keep any savings in exchange for the $2,500 he paid Kelly and the $493 he paid de Jonge. Fourth, respondent did not produce the originals or copies of these purported written agreements. Nor did he proffer a credible explanation for not producing them.

clients' medical bills, to the extent that Respondent was able to negotiate a reduction in them" that was adverse to his clients. Then, the hearing judge determined that respondent violated rule 3-300(A) because she found that the challenged provision was neither fair nor reasonable to his clients nor fully disclosed to them. In addition, she found that respondent violated rule 3-300(B) because "he did not notify either Kelly or de Jonge that they had the right to seek the advice of an independent attorney of their choice." Finally, she found that respondent violated rule 3-300(C) because his violations of rule 3-300(A) and rule 3-300(B) precluded Kelly and de Jonge from giving their informed written consent. We reject the hearing judge's culpability findings under count 4.

In *Silverton I*, the State Bar challenged the pretrial dismissal of count 4 by the hearing judge who filed the 1999 decision. Even though that hearing judge did not state why he dismissed count 4, we concluded that it was because he found, as a matter of law, that the retainer agreements *as pleaded in the NDC* did not convey, from the Kellys and the de Jonges to respondent, an adverse pecuniary interest within the meaning of rule 3-300. (*Silverton I*, 4 Cal. State Bar Ct. Rptr. at p. 256.)

In reviewing the hearing judge's dismissal of count 4 in *Silverton I*, we noted that rule 3-300 and rule 4-200 are not mutually exclusive. (4 Cal. State Bar Ct. Rptr. at p. 256.) As we explained, "If the transaction is a 'fee agreement' it must meet the standards [prohibiting unconscionable fees] set forth in rule 4-200. However, if that fee agreement also involves the transfer of an interest proscribed under rule 3-300, the requirements of that rule must also be satisfied." (*Ibid.*) Thus, we concluded that, even though count 4 alleged that the challenged provision was a "fee agreement," count 4 could still state a disciplinable offense for violating rule 3-300. (*Ibid.*) In fact, we determined that count 4 stated such an offense because it alleged "a transfer of a pecuniary interest and a violation of each of the elements of rule 3-300." (*Ibid.*)

Of course, even though count 4 actually stated a disciplinable violation of rule 3-300, we still could have sustained the hearing judge's dismissal of that count if we could have determined that, as a matter of law, no violation of rule 3-300 had occurred. However, we could not make such a determination in *Silverton I* because we did not have "an understanding of the facts and

circumstances involved in the making of [the] agreement and a full understanding of what, if anything, was conveyed by that agreement."[13] (4 Cal. State Bar Ct. Rptr. at p. 256.) Accordingly, we reversed the hearing judge's dismissal of count 4 and remanded the count for trial. (*Id*. at p. 257.)

In reversing the hearing judge's dismissal, we noted that a contingency fee based on the client's recovery, even when secured by a lien granted in the fee agreement, has never been considered to be an interest that falls within the ambit of rule 3-300. (*Silverton I*, 4 Cal. State Bar Ct. Rptr. at pp. 256, 262; see ABA Model Rules Prof. Conduct, rule 1.8(j)(2) ["a lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client except that the lawyer may . . . [¶] contract with a client for a reasonable contingent fee in a civil case"].) Accordingly, we held that rule 3-300 will apply to a retainer agreement only if the "agreement *includes a provision whereby an attorney obtains a pecuniary interest that is distinguishable from the usual contingent fee agreement*, including the granting of a lien to secure that contingent attorney's fee." (*Silverton I*, 4 Cal. State Bar Ct. Rptr. at p. 262, italics added.)

At trial on remand, the State Bar did not establish, by clear and convincing evidence, that the challenged provision (1) was an assignment to respondent of the Kellys' and the de Jonges' rights to compromise (or to seek to compromise) their medical bills or (2) granted respondent an exclusive right to compromise (or to seek to compromise) the clients' medical bills. Without question, nothing in the retainer agreement suggests such an *assignment* of rights much less suggests the granting of an exclusive right to compromise the clients' medical bills. As respondent testified without contradiction, at the time he met with his clients to review the settlements in their cases and obtain their approval as to how he would disburse the settlement proceeds, he explained to them that they could seek to compromise their medical bills directly with their doctors and keep any savings they obtained. At best, the State Bar proved that, if

[13]One important reason we did not have, and could not have had, an understanding of any of these issues was because, in *Silverton I*, neither the retainer agreements nor their provision regarding the compromise of the clients' medical bills was before us.

respondent attempted to compromise the medical bills and was successful in negotiating a reduction, he was authorized, under the challenged provision, "to retain as an additional fee" 100 percent of the reduction. However, such a showing is insufficient to establish that respondent obtained an adverse interest within the ambit of rule 3-300. In short, the State Bar failed to clearly and convincingly establish that, under the challenged provision, respondent obtained a pecuniary interest that is distinguishable from a usual contingent fee. Accordingly, we reverse the hearing judge's findings of culpability under count 4 and dismiss count 4 with prejudice. (*Silverton I*, 4 Cal. State Bar Ct. Rptr. at p. 262.)

**Count 5 (Rule 4-200)**

The hearing judge found that respondent willfully violated rule 4-200 as charged in count 5 when he entered into the retainer agreements in the Kelly and the de Jonge matters because the challenged provision in each of those agreements was an agreement for an unconscionable fee.

The negotiation of a fee agreement between an attorney and a client in this state is, in general, an arm's length transaction; however, this rule " 'is not a license to mulct the unfortunate.' [Citations.]" (*Silverton I*, 4 Cal. State Bar Ct. Rptr. at p. 258; see also *Bird, Marella, Boxer & Wolpert v. Superior Court* (2003) 106 Cal.App.4th 419, 430-431 [attorneys have fiduciary duty to charge only fair, reasonable, and conscionable fees].) Furthermore, rule 4-200(A) provides that an attorney "shall not enter into an agreement for, charge, or collect an . . . unconscionable fee." In this state, a fee is unconscionable when (1) it is "so exorbitant and wholly disproportionate to the services performed as to shock the conscience" (*Goldstone v. State Bar* (1931) 214 Cal. 490, 499) or (2) there is some other fraud, overreaching, or misconduct on the attorney's part (*Herrscher v. State Bar* (1935) 4 Cal.2d 399, 402-403).

Rule 4-200(B) provides that the "Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except

where the parties contemplate that the fee will be affected by later events." It also lists 11 non-exclusive factors to consider when determining the conscionability of a fee.[14]

The cases of *Bushman v. State Bar* (1974) 11 Cal.3d 558 and *In the Matter of Yagman* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788 are instructive in determining whether the fee provided for in the challenged provision is unconscionable. In *Bushman*, the Supreme Court found that the attorney charged his client an unconscionable fee in a family law matter where the attorney (1) filed only simple, routine documents on behalf of a minor client on welfare; (2) identified no complex issues requiring special skills in the case; (3) did not establish that the case required extensive research or other work; (4) was awarded a small attorney fee by the court to be paid by the opposing party; and (5) billed the client for an amount grossly disproportionate to the value of the services rendered. (11 Cal.3d at pp. 564-565.) Then, in *Yagman*, the attorney in a civil rights, class action suit, received as fees $378,175 awarded by the court as well as 45 percent of the clients' recovery, while each of the attorney's clients except for one received a recovery of only slightly in excess of $800. (3 Cal. State Bar Ct. Rptr. at p. 800.) We concluded that the attorney's fee in that case was "unconscionable under the factors set forth in rule 4-200(B), particularly in that the amount of the fee [outweighed] the value of the services in light of the results obtained." (*Ibid.*)

Respondent was substantially more sophisticated than the Kellys and the de Jonges. The novelty and difficulty of negotiating reductions of medical bills, at least to one who claims to be a top-notch personal injury lawyer, are very minimal. Respondent's acceptance of the Kellys' and the de Jonges' cases would not and did not preclude or reduce respondent's other employment

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[14] Those 11 factors are as follows: (1) the amount of the fee in proportion to the value of the services performed; (2) the relative sophistication of the attorney and the client; (3) the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly; (4) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney; (5) the amount involved and the results obtained; (6) the time limitations imposed by the client or by the circumstances; (7) the nature and length of the professional relationship; (8) the experience, reputation, and ability of the attorney; (9) whether the fee is fixed or contingent; (10) the time and labor involved; and (11) the informed consent to the fee.

opportunities in any measurable amount. Neither the clients nor the circumstances imposed any significant time limitations on respondent. Respondent did not seek, much less obtain, the informed consent to the fees by his clients. Even the amount of time and labor that respondent testified he spent in negotiating reductions in medical bills in personal injury cases like the Kellys' and the de Jonges' was minimal.

In light of the foregoing factors, we conclude that the challenged provision was an agreement for an unconscionable fee and that respondent, therefore, willfully violated rule 4-200 when he entered into the retainer agreements with the Kellys and the de Jonges. Our conclusion that respondent willfully violated rule 4-200 is not based on the fact that the retainer agreements provided for respondent to recover both (1) a contingency fee on all amounts recovered *and* (2) an additional fee on any negotiated reduction in the clients' medical bills. We agree with respondent's contentions (1) that he did not have a pre-existing duty, whether under the terms of the retainer agreements or otherwise, to negotiate (or to seek to negotiate) a reduction in the Kellys' or the de Jonges' medical bills and (2) that he was, therefore, entitled to contract for, charge, and collect *a reasonable fee* for providing that service. Unfortunately, respondent did not do so. He unequivocally contracted for a *100 percent* contingency fee of any reduction he was able to negotiate. At least within the context of the present case, that fee is clearly unreasonable, unconscionable, and improper. (See generally 1 Witkin, Cal. Procedure (4th ed. 1996) Attorneys, § 203, p. 259 ["[I]n cases where *substantial* services are to be performed and expenses incurred, [contingent] fees equal to one-third or one-half the recovery [have been] approved. . . . But if the services are slight, *or*, though substantial, the amount of the fee is more than one-half, a court may refuse to enforce the provision." (Italics added.)].)

Moreover, in reaching our conclusion that respondent violated rule 4-200, we reject the hearing judge's finding that respondent did not obtain his clients' informed consent to the 100 percent fee "because he did not inform them . . . of his fiduciary obligation to seek a compromise of their medical bills as part of the legal services which are normally provided in connection with a personal injury action." The State Bar never alleged, much less proved, that attorneys have a fiduciary duty to seek reductions of their personal injury clients' medical bills. What is more,

even though the State Bar alleged in the NDC that it was customary for attorneys to seek reductions in their personal injury clients' medical bills as part of the legal services for the contingency fee, the State Bar never proffered any evidence to support it.[15] However, this factual allegation is not a requisite element of a rule 4-200 violation. Thus, contrary to respondent's contention, the State Bar's failure to prove this allegation did not preclude the Bar from establishing the charged rule 4-200 violation. Nor does the failure require the dismissal of that charged violation.

Because rule 4-200(A) precludes an attorney from entering into any such agreement without qualification, the State Bar need not establish that the attorney acted *knowingly* or *intentionally* to establish a rule 4-200 violation. All that the State Bar must prove is that the attorney acted willfully – that the attorney acted or failed to act purposefully or, stated differently, that the attorney intended to commit the act or intended not to commit the act. (*Zitny v. State Bar* (1966) 64 Cal.2d 787, 792.) Thus, because the record clearly establishes that respondent willfully entered into the retainer agreements with the Kellys and the de Jonges, his contentions (1) that the challenged provision was not the "agreement" he intended to enter into with his clients, (2) that he never intended to implement or enforce the challenged provision and (3) that he always proceeded as if the challenged provision did not exist are immaterial to the issue of whether he willfully violated rule 4-200. At best, had we found respondent's testimony supporting these contentions credible, they might have been relevant to the issues of aggravation and mitigation. Moreover, respondent's contentions are belied by the fact that he clearly relied on and used the challenged provision to "induce" Kelly and de Jonge to enter into the post-settlement agreements by telling them that the retainer agreements which they signed in November 1995 already authorized him to compromise their medical bills and to keep any savings.

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[15]Although it may have been a "customary" practice in the past, we were unable to find any legal authority to support it.

We reject respondent's contention that he cannot be found culpable of violating rule 4-200 in the Kelly and the de Jonge matters because he did not sign the retainer agreements in those matters. First, respondent admits that those retainer agreements were his standard form fee agreement, which he had instructed his staff to use when "signing up" new clients. Second, the agreements were signed on respondent's behalf by his secretary Garcia, who respondent admits was authorized to "sign up" new clients for him. Finally, regardless of whether respondent or one of his authorized agents signed the agreements, respondent is precluded from denying the agreements' validity because he relied on them to collect his contingent fee from his clients.

**Uncharged Violations (Rule 3-300)**

The hearing judge found that respondent willfully violated rule 3-300 in February 1996 when he entered into post-settlement agreements with Kelly and de Jonge without complying with the requirements of rule 3-300. The hearing judge did not consider these violations as independent grounds for discipline because the State Bar neither charged them in the NDC nor sought to amend the NDC to add them. (See Rules Proc. of State Bar, rule 104 [amendments of pleadings].) Instead, citing *Edwards v. State Bar, supra*, 52 Cal.3d at pages 35-36, the hearing judge considered these rule 3-300 violations only as aggravating circumstances under standard 1.2(b)(ii), which provides that it is an aggravating circumstance if "the current misconduct found or acknowledged by the [respondent] evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct."

Without question, these post-settlement agreements fell within the ambit of rule 3-300 because they were attorney business transactions with clients. (*Silverton I*, 4 Cal. State Bar Ct. Rptr. at pp. 261-262.) In light of the fiduciary relationship between an attorney and his client all dealings between an attorney and his client that are beneficial to the attorney will be closely scrutinized with the utmost strictness for any unfairness. (*Ritter v. State Bar* (1985) 40 Cal.3d 595, 602.)

The record clearly establishes that respondent did not fully disclose and transmit in writing to Kelly and de Jonge the terms of the transactions as required under rule 3-300(A).

Even though respondent contends that he orally advised Kelly and de Jonge that they could seek independent legal advice, it is clear that he did not do so in writing and that he did not advise them to seek the advice of independent counsel of their choice and did not give them a reasonable opportunity to seek that advice. (Rule 3-300(B); cf. *Rose v. State Bar* (1989) 49 Cal.3d 646, 663; *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 164, 165.)[16] It is also clear that respondent did not obtain Kelly's and de Jonge's written consent to the transactions (i.e., the post-settlement agreements) as required under rule 3-300(C).

Finally, because the post-settlement agreements were attorney-client business transactions, respondent had the burden to show that the transactions were fair and reasonable to the Kellys and the de Jonges. (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 314; *Hunniecutt v. State Bar* (1988) 44 Cal.3d 362, 372-373; *Silverton I*, 4 Cal. State Bar Ct. Rptr. at pp. 261-262.) What constitutes the requisite fairness and reasonableness depends on the facts of each case. Some of the most important factors include (1) whether the attorney acted in good faith, (2) whether the consideration, if any, was adequate, (3) whether the client had the benefit of independent legal advice, and (4) whether the attorney fully disclosed the terms of the transactions in writing. (See, e.g., G. Bogert, Handbook of the Law of Trusts and Trustees (rev. 2d ed. 1978) § 544.) Another very important consideration is whether the attorney gave the client the same advice against himself that he would have given against a third party. (*Mayhew v. Benninghoff* (1997) 53 Cal.App.4th 1365, 1368-1370.)

For the reasons discussed *post* under the section of good faith mitigation, we find that respondent acted in good faith when he entered into the post-settlement agreements with Kelly and de Jonge because he honestly and reasonably believed that he had the right to negotiate at arms length with them for the assignment of the rights to compromise their medical bills and keep any savings. However, we find that respondent did not act in good faith when he relied on

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[16]As quoted in footnote 4, *ante*, page 3, rule 3-300(B) requires that "The client [be] advised in writing that the client *may* seek the advice of an independent lawyer of the client's choice and [be] given a reasonable opportunity to seek that advice." The language of rule 3-300(B) appears inconsistent with Supreme Court precedent that *requires* attorneys to advise their clients to seek independent counsel (see, e.g., *Rose v. State Bar, supra*, 49 Cal.3d at p. 663).

the retainer agreements to "induce" Kelly and de Jonge to enter into the post-settlement agreements.

As to consideration, respondent paid to the Kellys $2,500 to purchase the right to compromise their medical bills, and to the de Jonges $493 for the right to compromise their medical bills. Respondent has failed to establish the adequacy of the consideration at the time the contracts were entered into, and we will not address it further.

We have determined that Kelly and de Jonge did not have the benefit of independent legal advice, and that respondent did not fully disclose all the terms of the transactions to them in writing. In addition, respondent did not give Kelly and de Jonge the same advice he would have given them against a third party. For example, respondent did not advise Kelly and de Jonge not to enter into the agreements until the purchaser (i.e., respondent) provided some kind of security to insure that their medical bills would be paid. (Cf. *Hunniecutt v. State Bar, supra*, 44 Cal.3d at p. 373 [absence of security, when security would ordinarily be required to protect client, is an indication of transaction's unfairness].) While respondent assumed the responsibility to pay the medical bills, his clients clearly remained legally responsible for those bills in the event respondent did not pay or timely pay them. We view these foregoing failures and respondent's partial lack of good faith, to be dispositive. Accordingly, we find that respondent failed to carry his burden to prove that the post-settlement agreements were fair and reasonable to the Kellys and the de Jonges.

We address the propriety of the hearing judge's consideration of these uncharged rule 3-300 violations as multiple acts of misconduct as aggravation *post* under our discussion of the State Bar's contentions regarding aggravating circumstances.

**The Belenki Matter – (Counts 1 & 2 – Case Number 99-O-13251)**

**Findings of Fact**

In May 1999, an attorney who routinely referred cases to respondent referred Boris Belenki to respondent for representation regarding personal injuries Belenki purportedly suffered in an automobile accident. On May 28, 1999, Belenki signed a contingent fee retainer

agreement. Even though Belenki's retainer agreement was similar to the Kellys' and the de Jonges' retainer agreements, it was one of respondent's revised form retainer agreements.

Belenki's retainer agreement provided (1) that he retained respondent "to represent him as his attorney at law in a cause of action against all concerned parties and/or whomsoever may be liable, arising out of auto accident of 5/25/99" and (2) that respondent was to receive, as his attorney's fee for the services described in the agreement, "[one-third] of any [and] all amounts recovered by way of a settlement or otherwise, if the matter is settled before suit is filed, and 40% after suit is filed. This includes recovery on property damage, loss of use of vehicle, and medical pay." Belenki's agreement contained (1) a provision that was substantially identical to the challenged provision in each of the Kellys' and de Jonges' agreements authorizing respondent to compromise the client's medical bills and retain any savings as "an additional fee" and (2) an identical provision that respondent's contingent fee be taken from the total amount recovered with any balance remaining after deduction of costs and certain specified liens to be the "Client's net recovery."

Even though only Belenki signed the retainer agreement, on May 28, 1999, respondent made and signed a hand-written modification on the face of the agreement. Thus, respondent's assertion that the Belenki retainer agreement was never legally executed is meritless.

In October 1999 and before suit was filed, respondent settled Belenki's claims for $8,150. Respondent's attorney's fees were $2,717 (one-third of $8,150). After respondent deducted $2,717 in fees and $81 in costs, the net recovery remaining for Belenki was $5,352 ($8,150 less $2,717 less $81). After deducting Belenki's medical bills of $4,250, Belenki's recovery from the $8,150 was $1,102 ($5,352 less $4,250).[17]

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[17]The medical bills totaled $4,250 and were itemized as follows: initial examination, $260; extensive re-examination, $110; two follow-up examinations @ $80, $160; final examination $120; 40 hot pack treatments @ $20, $800; 40 ultrasound treatments @ $40, $1,600; and 40 electro-stimulations @ $30, $1,200. In this case, a bus grazed one of Belenki's outside mirrors and put a little scratch on his car. There was no damage to the bus. The damage to Belenki's car totaled only $863, of which $636 was for labor and $227 was for parts. According to respondent, only the $227 for parts is considered to be the actual property damage to Belenki's car. According to respondent's testimony, Belenki's $4,250 in medical bills is *not* consistent with the

On October 22, 1999, when respondent met with Belenki to go over the settlement and distribution of the settlement proceeds, he proposed to increase Belenki's ultimate recovery from $1,102 to $2,000 by offering to pay him an additional $898 for the right to compromise his medical bills and keep any savings. Belenki accepted. Belenki and respondent signed an "AUTHORIZATION TO COMPROMISE MEDICAL BILLS," (hereafter Belenki post-settlement agreement) and respondent paid Belenki $2,000. The Belenki post-settlement agreement recited (1) that it was "given in consideration for the fact that the SILVERTON LAW OFFICES has accepted as its risk the possibility that payment [of some of the medical bills] mat [*sic*] be required from the attorney's fees" and (2) that "The [client] has been informed that [he] may consult with any other attorney concerning this matter and has declined to do so."

After the settlement, respondent got the doctor to reduce Belenki's medical bill down from $4,250 to $2,717, for a savings of $1,533. The $2,717 that the doctor ultimately accepted in satisfaction of Belenki's $4,250 bill was exactly one-third of the total recovery of $8,150. After respondent collected his $2,717 in attorney's fees and deducted the $81 in costs, paid the reduced medical bill of $2,717, and paid Belenki $2,000, there remained a balance of $635 from the $8,150 settlement proceeds. That $635 represented respondent's share of the $1,533 reduction in Belenki's medical bills. Or, stated differently, the $635 that respondent realized from the Belenki post-settlement agreement was in addition to his legal fees of $2,717 for a total of $3,352.

**Conclusions of Law**

**Count 1 (Rule 3-300)**

The hearing judge found that, when respondent entered into the retainer agreement with Belenki, respondent willfully violated rule 3-300 as charged in count 1. We reverse the hearing judge's culpability finding and dismiss count 1 with prejudice for the same reasons we stated *ante* in the Kelly and de Jonge matters.

**Count 2 (Rule 4-200)**

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$227 in property damage. Respondent testified that he probably would not have accepted Belenki's case if it had not been referred to him by an attorney who refers cases to him, whom respondent wanted to keep happy.

The hearing judge found that, when respondent entered into the retainer agreement with Belenki, respondent entered into a fee agreement for unconscionable fees in willful violation of rule 4-200 as charged in count 2. Specifically, she found that the challenged provision permitting respondent to compromise Belenki's medical bills and to keep 100 percent of the negotiated savings as an additional fee was an agreement for an unconscionable fee. For the same reasons we stated *ante* in the Kelly and de Jonge matters, we agree and adopt her findings.

**Uncharged Violations (Rule 3-300)**

The hearing judge found that respondent willfully violated rule 3-300 in October 1999 when he entered into the Belenki post-settlement agreement. The hearing judge considered the uncharged violation only for purposes of aggravation.

Because the Belenki post-settlement agreement was an attorney-client business transaction, it fell within the ambit of rule 3-300. (*Silverton I*, 4 Cal. State Bar Ct. Rptr. at pp. 261-262.) The record clearly establishes that respondent did not fully disclose and transmit in writing to Belenki the terms of the transaction as required under rule 3-300(A); nor did respondent advise Belenki to seek the advice of independent counsel of his choice and then give Belenki a reasonable opportunity to do so as required under rule 3-300(B). (Cf. *Rose v. State Bar, supra*, 49 Cal.3d at p. 663; *In the Matter of Hagen, supra,* 2 Cal. State Bar Ct. Rptr. at pp. 164, 165.)

For the reasons discussed *post*, we find that respondent acted in good faith when he entered into the post-settlement agreement with Belenki. We further conclude that respondent failed to carry his burden to prove that the post-settlement agreement was fair and reasonable. Respondent failed to prove the $898 respondent paid to Belenki to purchase the right to compromise his medical bills was adequate consideration at the time the contract was entered into. Moreover, Belenki did not have the benefit of independent legal advice; nor did respondent fully disclose all the terms of the transactions to him in writing. Also, respondent did not give Belenki the same advice he would have given him against a third party; nor did he advise Belenki not to enter into the agreement until the purchaser (i.e., respondent) provided some kind of security to insure that his medical bills would be paid. (Cf. *Hunniecutt v. State Bar, supra,* 44

Cal.3d at p. 373.) We discuss the propriety of considering these uncharged violations as aggravation *post.*

**The Hou Matter (Count 1 – Case Number 95-O-10829)**

**Findings of Fact**

We incorporate by reference the findings of fact regarding the Hou matter that we independently made in *Silverton I*, 4 Cal. State Bar Ct. Rptr. at pages 259 to 262, and which we summarize as follows. On June 25, 1992, Janette Hou; her sons, Raymond and Phillip; and her mother, Fan Hou, were involved in a traffic accident with a truck operated by Durham Transportation Inc. (Durham). Later that same month, Janette retained Attorney David L. Watson to represent her and her sons in their claims against Durham. Fan also retained Watson to represent her.

The Hous' retainer agreements with Watson provided that he was retained by the Hous to represent them with respect to their "claims against any person or entity responsible for injuries and damages sustained on about 6-25, 1992, arising out of [the accident]," for which he was to receive a contingent fee of one-third of the gross recovery if the claims were settled before filing suit or demand for arbitration and 40 percent thereafter. In a separate paragraph, the agreements provided that, if the client required Watson "to perform other legal services such as collecting excess medical pay. . .," he was to receive, as an additional fee, one-third of any amounts recovered by or on behalf of the clients.

The Hous had their automobile insurance with 20th Century Insurance. Their policy included medical payment coverage (hereafter med pay) under which 20th Century paid $7,391 in reimbursements for the Hous' medical expenses related to the accident. Watson claimed and took a one-third fee of $2,470.73 out of the Hous' $7,391.[18] He then placed and held the

[18]Our opinion is not to be construed as condoning Attorney Watson's conduct in contracting for, charging, and collecting a *one-third fee* on the med pay benefits that the Hous received from their own insurance carrier when there was no dispute as to the Hous' entitlement to those

remaining $4,910.68 ($7,391 less $2,470.73) in his trust account presumably for the Hous' benefit.

Watson eventually filed a lawsuit against Durham on behalf of the Hous and, then in June 1994, associated respondent to assist him in "completing" the lawsuit by substituting respondent in as the Hous' counsel. Watson assured the Hous that there would be no resulting increase in fees.

In August 1994, respondent settled the Hous' lawsuit for a total of $16,500, of which $9,500 was allocated to Janette and her sons, and $7,000 was allocated to Fan. Because the Hous' claims were not settled until after a lawsuit was filed, respondent was entitled to a 40 percent contingent fee. Respondent's fee for Janette and her sons' share of the settlement proceeds was $3,800 (40 percent of $9,500).[19] After respondent deducted $3,800 in fees and $200 in costs, the net recovery remaining for Janette and her sons was $5,500 ($9,500 less $3,800 less $200). Then, after taking Janette and her sons' medical bills of $4,311 into account, their recovery was $1,189 ($5,500 less $4,311). To this $1,189, respondent added $2,557, which was Janette and her sons' share of the med pay benefits for a new balance of $3,746. On August 30, 1994, respondent proposed to increase Janette and her sons' recovery from $3,746 to $4,000 by offering to pay them $254 for the right to compromise their medical bills and to keep any savings and to accept the risk that the doctor may not compromise their bills.[20] That same day,

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benefits or as to the dollar amount of benefits to which the Hous were entitled to receive. (See, e.g., rule 4-200(A); *Goldstone v. State Bar, supra*, 214 Cal. at p. 497 [attorney may not charge a contingent fee that is wholly disproportionate to the services performed; such conduct cannot be reconciled with the honesty and duty to deal fairly that attorneys owe to their clients]; cf. *In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 851 [attorney seeking or collecting fees for reduction of a medical lien must show value of services and informed consent of client].) However, because Watson is not a party to this proceeding, we do not further address his conduct.

[19]See footnote 8 , *ante* page 6 regarding no evidence of compromise of minor claims.

[20]Respondent claims that, at the time Janette signed the authorization, he did not know if 20th Century would or could demand reimbursement for the med pay benefits. No such demand was ever made.

Janette accepted and signed an "AUTHORIZATION TO COMPROMISE DOCTOR'S BILL" (hereafter Hou post-settlement agreement), and respondent gave her a $4,000 check dated August 30, 1994. Respondent did not sign that agreement.

Respondent's fee on Fan's share of the settlement proceeds was $2,800 (40 percent of $7,000). After respondent deducted $2,800 in fees and $200 in costs, the net recovery remaining for Fan was $4,000 ($7,000 less $2,800 less $200). Then, after taking her medical bills of $3,680 into account, Fan's recovery was $320 ($4,000 less $3,680). To this $320, respondent added $2,353, which was Fan's share of the med pay benefits for a new balance of $2,673. On August 30, 1994, respondent proposed to increase Fan's recovery from $2,673 to $3,000 by offering to pay her $327 for the right to compromise her medical bills and to keep any savings. That same day, Fan accepted and signed the same Hou post-settlement agreement that Janette had signed, and respondent gave Fan a $3,000 check dated August 30, 1994.

On September 14, 1994, respondent sent Attorney Watson a letter in which he stated that he enclosed $1,833 as Watson's share of the attorney's fees[21] and $323 in cost reimbursements. Further, in that letter, respondent unequivocally stated that he was "sure" that he could get the doctors to compromise the Hous' medical bills down to one-third of the $16,500 gross recovery, which was $5,500. Thereafter, respondent got the doctors to reduce the Hous' bills down from $7,991 to $5,500 (exactly one-third of $16,500) for a savings of $2,491. Attorney Watson sent respondent the Hous' $4,910.68 share of the med pay benefits he was holding.

In sum, respondent obtained a total recovery of $21,410.68 ($16,500 plus $4,910.68) in the Hou matter. From that $21,410.68, respondent collected a combined total of $6,600 in attorney's fees, a combined total of $400 in costs, paid the reduced medical bill of $5,500, and paid the Hous a combined total of $7,000. There remained a balance of $1,910.68 from the $21,410.68 settlement and med pay proceeds. That $1,910.68 represented respondent's share of the $2,491 reduction in the Hous' medical bills. Or, stated differently, the $1,910.68 that

[21]We note, but do not address, that respondent stated that the $1,833 he enclosed in his letter was Watson's one-third share of respondent's one-third fee when respondent did not collect a one-third fee from the Hous; he collected a 40 percent fee.

respondent realized from his post-settlement agreement with the Hous was in addition to his legal fees of $6,600 for a total of $8,510.68.

**Conclusions of Law**

**Count 1 (Rule 3-300)**

In *Silverton I*, we independently found that respondent willfully violated rule 3-300 as charged in count 1 when he entered into the post-settlement agreement with the Hous, which was an attorney–client business transaction that fell within the purview of rule 3-300. We found that respondent (1) failed to disclose to the Hous, information necessary for a reasonable understanding of the transaction, (2) failed to provide the Hous with written notice of their right to seek independent legal counsel, and (3) failed to prove that the transaction was fair and reasonable to the clients.[22] (*Silverton I*, 4 Cal. State Bar Ct. Rptr. at pp. 261-262.)

**LEVEL OF DISCIPLINE**

**Factors In Mitigation**

The hearing judge found that respondent failed to establish any mitigating circumstances. On review, respondent contends that the hearing judge erred in not finding good faith mitigation. (Std. 1.2(e)(ii).) As we understand his briefs, respondent also contends that the hearing judge erred in not finding lack of significant harm. (Std. 1.2(e)(iii).)

**Good Faith (Std. 1.2(e)(ii))**

There can be no question that an attorney is entitled to good faith mitigation (std. 1.2(e)(ii)) when his misconduct is the result of an erroneous belief that his actions are appropriate, which belief is honestly held and objectively reasonable. (See, e.g., *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 604, 605 [mitigation given for

[22]In *Silverton I*, we did not find that respondent's post-settlement agreement with the Hous was unfair; instead, we found only that respondent failed to carry his burden to prove that it was fair.

attorney's sincere belief that he was acting in support of sound public policy by improperly revealing client confidential information to the judge in a civil case]; cf. *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 331 [attorney's credible good faith belief not a mitigating circumstance because belief was not reasonable]; *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.) In the Hou matter in *Silverton I*, 4 Cal. State Bar Ct. Rptr. at page 262, we dismissed count 3 in case number 95-O-10829, which charged respondent with a section 6106 moral turpitude violation in the Hou matter. We did so because we determined (1) that, "although mistaken, respondent honestly and reasonably held the belief that he had the right to negotiate at arm's length with the Hous for the assignment of the right to compromise the medical bills" and (2) that this mistaken belief precluded a finding of moral turpitude. (*Ibid.*) In short, we dismissed count 3 because we concluded that respondent's mistaken belief was a "good-faith-belief defense" to the charged section 6106 violation. (See *In re Bloom* (1987) 44 Cal.3d 128, 134-135.)

With minimal analysis and citing *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 497, as its only authority, the State Bar contends that, because we dismissed count 3 based on respondent's mistaken belief, we cannot give him mitigating credit for it. According to the State Bar, to do so would improperly permit respondent to "receive credit twice for his alleged good faith." We disagree. *Farrell* does not support the State Bar's contention. The portion of *Farrell* cited by the State Bar (1 Cal. State Bar Ct. Rptr. at p. 497) is nothing more than the application of the long established principle that it is inappropriate to use the same conduct relied on to establish a disciplinary violation to establish an aggravating circumstance. (See also *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 11; *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59, 69; *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343, 351.)

We find that the same good faith mistaken belief we relied on to dismiss count 3 in *Silverton I* clearly establishes good faith mitigation with respect to the Hou matter in 1994. There is nothing in the record which suggests that, in February 1996 or October 1999 (which was when respondent entered into the post-settlement agreements in the Kelly, de Jonge and Belenki

matters), respondent no longer honestly and reasonably held that same mistaken belief that he had the right to negotiate at arms length with his personal injury clients with respect to the post-settlement agreements. And we conclude that, as of those dates, respondent still honestly held that mistaken belief and that the mistaken belief was still reasonable. Our conclusions are supported by the fact that the hearing judge who presided over case number 95-O-10829 and who filed the 1999 decision in that case dismissed all of the charges against respondent. We reject the State Bar's contention that respondent's mistaken belief was no longer reasonable once the State Bar filed its request for review in *Silverton I* in May 1999, which was before respondent entered into his post-settlement agreement with Belenki. The mere fact that the State Bar filed a request for review does not, in this case, make respondent's mistaken belief unreasonable. In sum, we conclude that respondent is entitled to good faith mitigation in not just the Hou matter, but also the Kelly, de Jonge and Belenki matters.

**Lack of Significant Harm (Std. 1.2(e)(iii))**

We agree with respondent that no one suffered any significant harm because of his misconduct. Even though respondent benefitted from his client business transactions that violated rule 3-300,[23] they were made under agreements which he mistakenly believed in good faith that he could negotiate with his clients at arm's length. Accordingly, respondent is entitled to a minimal level of lack of harm mitigation. (Std. 1.2(e)(iii).)

**Factors in Aggravation**

**Aggravation Asserted at Trial or Found by the Hearing Judge**

The only aggravating circumstance that the State Bar raised or requested the hearing judge to find was respondent's prior record of discipline (std. 1.2(b)(i)), which it claimed was respondent's 1975 disbarment in *Silverton v. State Bar, supra*, 14 Cal.3d 517. It is not clear

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[23]Moreover, the Kellys benefitted substantially from the post-settlement agreement in comparison to respondent. As noted *ante*, respondent paid the Kellys $3,000 and received $492. Belenki was paid $898 and respondent received $635. Also, as noted *ante*, even though there is evidence establishing that respondent paid the de Jonges $493, there is no evidence that respondent received any additional funds from the de Jonges. As noted *ante*, respondent paid the Hous a combined total of $581 and received an additional $1,910.68.

whether the hearing judge found that respondent's disbarment was a prior record of discipline for purposes of aggravation. Accordingly, the State Bar requests that we clarify the record by expressly finding that respondent's disbarment is a prior record of discipline.

The hearing judge sua sponte found the following three aggravating circumstances: (1) respondent's misconduct caused harm to his clients (std. 1.2(b)(iv)); (2) respondent's uncharged violations of rule 3-300 in the Kelly, de Jonge, and Belenki matters; and (3) respondent's misconduct involved multiple acts of misconduct (std. 1.2(b)(ii)). The State Bar urges us to adopt each of these three aggravating factors.

**Prior Record of Discipline (Std. 1.2(b)(i))**

We agree with the State Bar that respondent's disbarment in 1975 is a prior record of discipline, which is an aggravating circumstance under standard 1.2(b)(i). Even though the issue of respondent's disbarment as a prior record of discipline was raised in the hearing department, the State Bar did not physically offer the appropriate documentary evidence of respondent's prior record either as an exhibit or a subject of judicial notice in accordance with *In the Matter of Kizer* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 87, 93. (See also State Bar Ct. Rules of Prac., rule 1224(f) [document offered as subject of judicial notice is to be marked as such and is to remain in the official court file].) In its October 31, 2002 Motion to Augment the Record on Review and Request for Judicial Notice (hereafter motion to augment the record), the State Bar provided us with the appropriate documentary evidence of respondent's prior record and requested that we take judicial notice of it. We granted the State Bar's request. (See Rules Proc. of State Bar, rule 306(b).)

"A prior record of discipline consists of an authenticated copy of all charges, stipulations, findings and decisions (whether or not final) reflecting or recommending [the] *imposition of discipline* on a party who is presently the subject of a State Bar Court proceeding." (Rules Proc. of State Bar, rule 216(a), italics added; see also std. 1.2(f).) Standard 1.4(d) expressly provides that disbarment is one of the degrees of sanction (i.e., discipline) that may be imposed on an attorney for professional misconduct. Accordingly, a Supreme Court disbarment order is a prior record of discipline and, therefore, an aggravating circumstance under standard 1.2(b)(i). In his

1992 reinstatement proceeding, respondent established (1) his rehabilitation from his serious criminal conduct acts and (2) his present moral fitness for reinstatement to practice. Contrary to respondent's contention, these facts do not preclude or otherwise affect our consideration of his 1975 disbarment as a serious prior record of discipline.

**Harm to Clients (Std. 1.2(b)(iv))**

We do not adopt the hearing judge's finding of client harm aggravation because it is inconsistent with our finding of lack of significant harm mitigation.

**Uncharged Rule 3-300 Violations**

We adopt the hearing judge's finding that uncharged violations of rule 3-300 in the Kelly, de Jonge and Belenki matters are aggravating circumstances.

Due process requires that the attorney be given adequate notice of the charges against him and a reasonable opportunity to be heard on them. Under the adequate notice requirement, the attorney must be fairly apprised of the precise nature of the charges against him before the proceedings commence. (*In re Ruffalo* (1968) 390 U.S. 544, 551; *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 929; see also § 6085 [attorneys "shall be given fair, adequate and reasonable notice" of disciplinary charges against them].) As the Supreme Court stated in *Hartford v. State Bar* (1990) 50 Cal.3d 1139, 1151, "We have held that an attorney may not ordinarily be disciplined on a matter not charged in the notice to show cause. [Citation.]" However, the principle that an attorney may not be disciplined for uncharged misconduct, is not inflexible, and in appropriate circumstances, attorneys have been disciplined for uncharged misconduct. (E.g., *Hartford v. State Bar, supra*, 50 Cal.3d at pp. 1153-1154; *Sternlieb v. State Bar, supra*, 52 Cal.3d at p. 321; see also *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442, 446 [regardless of whether the notice of charges was defective, no violation of attorney's right to notice occurred because the State Bar's pre-trial statement adequately apprised the attorney of the precise nature of the charges against him]; *Sullins v. State Bar* (1975) 15 Cal.3d 609, 618 [suggesting that no due process violation or miscarriage of justice will occur if attorney had sufficient notice to eliminate unfair surprise in preparation of his defense].)

Moreover, even though evidence of uncharged misconduct may not ordinarily be relied on to establish an independent basis of discipline, in appropriate circumstances, the evidence may be used in contested cases for other relevant purposes such as establishing an aggravating circumstance. (E.g., *Edwards v. State Bar, supra*, 52 Cal.3d at pp. 35-36 [no violation of attorney's right to adequate notice of charges when evidence of uncharged misconduct was relied on to establish an aggravating circumstance because evidence (1) was elicited for the relevant purpose of inquiring into cause of charged misconduct, (2) was used only to establish an aggravating circumstance and not an independent ground for discipline and (3) was attorney's own testimony].) Evidence of uncharged misconduct cannot be relied on to establish an aggravating circumstance if doing so would result in a violation of the attorney's right to adequate notice. Whether reliance on evidence of uncharged misconduct will result in such a violation must be determined from the individual facts of each case.

As noted *ante*, the hearing judge found that respondent willfully committed three uncharged violations of rule 3-300 when he entered into post-settlement agreements with Kelly, de Jonge and Belenki, which she considered only for purposes of aggravation under standard 1.2(b)(ii) (multiple acts of misconduct). We agree with the hearing judge that these uncharged violations may properly be considered aggravation under standard 1.2(b)(ii) (multiple acts of misconduct). We see no violation of respondent's right to adequate notice by the hearing judge and our reliance on the evidence of these uncharged rule 3-300 violations to establish an aggravating circumstance because the evidence was respondent's own testimony and because respondent offered his testimony explaining his version of how the alleged and charged misconduct occurred. (Cf. *Edwards v. State Bar, supra*, 52 Cal.3d at pp. 35-36.)

**Multiple Acts of Misconduct (Std. 1.2(b)(ii))**

We adopt the hearing judge's finding that respondent's misconduct involved multiple acts of misconduct, which is an aggravating circumstance under standard 1.2(b)(ii). In determining the number of multiple acts of misconduct, we consider not only the charged misconduct, but also any uncharged misconduct that is properly found to be an aggravating circumstance. (*In the*

*Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555, and cases there cited.)

**State Bar's Request for Additional Aggravation Determinations**

The State Bar also requests that we independently find the following four aggravating circumstances that it did not raise in the hearing department.

**Lack of Candor (Std. 1.2(b)(vi))**

"There is a clear distinction between credibility and candor. [Citation.] The determination of a witness's credibility (i.e., believability) is primarily within the province of the hearing judge because he or she saw and heard the witness testify. [Citation.] On the other hand, the determination that a witness's testimony lacks candor (i.e., the witness is lying) must ordinarily be found by clear and convincing evidence. [Citations.]" (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282.) We find that much of respondent's testimony lacked credibility; however, we do not find clear and convincing evidence establishing that any of his testimony lacked candor. Accordingly, we decline the State Bar's request to independently find any lack of candor aggravation.

**Uncharged Violations of Rule 4-200**

The State Bar now alleges that the provision in the November 6, 1995, contingent fee retainer agreements in the Kelly and de Jonge matters that granted respondent "a special power of attorney to settle or compromise any claim on client's behalf which, in [respondent's] *sole* judgment is fair and reasonable," is unconscionable in willful violation of rule 4-200 because it deprives the clients of their ultimate authority to accept or reject settlement offers. Because these purported violations were not charged, the State Bar requests that we consider them to be uncharged misconduct aggravation. We reject the State Bar's request because, assuming that respondent is culpable on these uncharged rule 4-200 violations, to rely on them either as an independent basis of discipline or an aggravating circumstance would violate respondent's right to adequate notice. The State Bar has been aware of this challenged provision at least since April 1997 when it filed the NDC in *Silverton I*, but has not challenged it until now. Not only was the

issue not litigated in the hearing department, the issue was not even raised in the evidence or the parties' arguments in the hearing department. Respondent was not given an opportunity to present any evidence regarding the propriety of the challenged provision or any relevant mitigating circumstances.

**Bad Acts Found in Respondent's Prior Reinstatement Proceedings**

The State Bar requests that we find and "consider the bad acts found in Respondent's [two prior unsuccessful] reinstatement proceedings as aggravating factors in determining the level of discipline to recommend to the Supreme Court [in the present proceeding]." We view any such acts found in prior State Bar Court proceedings to be relevant to the appropriate level of discipline in the present proceeding, and we are permitted, under rule 306(b) of the State Bar Rules of Procedure, to take judicial notice of the State Bar Court's opinions in respondent's two prior proceedings even though they were not proffered in the hearing department. However, we conclude that it would be inappropriate to consider those acts as aggravating circumstances. First, these acts were not raised in the hearing department, nor did the State Bar request that the hearing judge take judicial notice of the prior opinions. (Cf. *In the Matter of Kroff, supra*, 3 Cal. State Bar Ct. Rptr. at p. 858.) Moreover, because these acts were not raised in the hearing department, respondent did not have an opportunity to present any evidence to temper or further explain the bad acts. (Cf. *In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 209.)

**Uncharged Violations of Rule 4-100**

The record establishes that on October 18, 1999, respondent gave Belenki a $2,000 settlement check, which check was drawn on respondent's client trust account, but that State Farm did not even issue its settlement check to Belenki until October 25, 1999. Similarly, the record establishes that, on August 30, 1994, respondent gave Janette and Fan their settlement checks, which were drawn on respondent's client trust account, but that Durham did not even issue its settlement checks to the Hous until September 8, 1994. Respondent testified that it was

his customary practice to give his clients' their share of the settlement proceeds with checks drawn on his client trust account *before* he received the settlement drafts from the defendants or their insurance companies. Respondent asserts that his practice is appropriate because he either (1) post dates the checks or (2) has an oral or written agreement with the clients not to cash the checks for a stated period of time. This practice is a serious violation of the rule of professional conduct regarding client trust funds in that respondent issued trust account checks to clients when their settlement funds had not been deposited into the client trust account and may even result in the misappropriation of trust funds. (*In the Matter of Robins* (Review Dept. 1991)1 Cal. State Bar Ct. Rptr. 708, 712.) Yet, the State Bar did not charge or seek to amend the NDC to charge such a rule violation or misappropriation of client funds. Nonetheless, the State Bar requests that we consider respondent's practice as aggravation.

The due process facts here are very analogous to those in *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 949-950, where the Supreme Court considered evidence of uncharged misconduct. When respondent was questioned about his prematurely paying out the settlement proceeds from his client trust account to his clients and about the propriety of his doing so, he did not object; nor did he seek a continuance to meet the adverse evidence. Instead, he provided an explanation for his conduct. "Significantly, he does not claim he was prevented from presenting any other evidence or arguments in his defense, and he asserts no new evidence or arguments before us. . . . We do not condone imprecise charging in disciplinary cases and are sensitive to an attorney's claim that he was prejudiced by inadequate notice. However, we see no obstacle here to our consideration of the evidence . . . ." (*Id.* at p. 950.) Accordingly, we consider the evidence of respondent's uncharged rule 4-100 violation to be a serious aggravating circumstance.

**DISCIPLINE**

In disciplinary matters, our concern is the protection of the public, preservation of public confidence in the profession and the maintenance of high professional standards. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.3.) Even though we are guided by the standards and prior cases in determining the appropriate level of discipline to recommend to the Supreme

Court, it is clear that each case must be determined on its own facts. (*Alberton v. State Bar* (1984) 37 Cal.3d 1, 14.)

**Standards**

In determining the appropriate level of discipline to recommend, we look first to the standards. Under standard 1.6(a), when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended discipline is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for respondent's misconduct is found in standard 1.7(a), which provides that, when an attorney has one prior record of discipline, the discipline imposed in the current proceeding shall be greater than that imposed in the prior. Applying standard 1.7(a) in the present proceeding would require that we recommend respondent's disbarment. However, doing so would, in our view, be manifestly unjust, particularly in light of the fact that respondent's prior record of discipline is very remote in time. Respondent's prior discipline was imposed on him in 1975 for convictions that occurred in 1972. In sum, we decline to apply standard 1.7(a). Accordingly, we look to the next standard that provides for the highest level of discipline – standard 2.7. That standard provides that an attorney's culpability of a willful violation of rule 4-200, such as respondent's entering into fee agreements for an unconscionable fee, "shall result in *at least a six-month actual suspension* from the practice of law, irrespective of mitigating circumstances." (Italics added.)

**Case Law**

We are not required to apply the standards in a talismanic manner. (Cf. *Howard v. State Bar* (1990) 51 Cal.3d 215, 221.) And we must look to case law for further guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

In *Recht v. State Bar* (1933) 218 Cal. 352, 353, Recht was found culpable of charging an unconscionable fee and making misrepresentations to his clients in order to get them to employ him. The court also found that Recht attempted to shift blame to another and that Recht had made no restitution to his clients and no attempt at restitution until after the local administration

committee suggested to Recht and his counsel "that their recommendation might be affected by some effort in this direction." (*Id*. at p. 354.) While the court noted that Recht was young and inexperienced, the court discounted these factors because Recht's misconduct violated "the very fundamentals of common honesty and fair dealing." (*Id*. at p. 355.) The court there ordered that Recht be actually suspended from the practice of law for a period of three months. (*Ibid*.)

While *Recht* is similar to the present case, we conclude that *Recht* is more serious given the dishonesty finding in *Recht*.

We also consider *In the Matter of Hultman* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 297. Hultman was found culpable of entering into a business transaction with clients in violation of rule 3-300 and of committing an act involving moral turpitude in violation of section 6106 by making a misrepresentation, through gross negligence, in an estate accounting to a court. (*Id*. at pp. 305-307.) One aggravating circumstance was found, that Hultman had recklessly failed to perform legal services competently, but this court gave the aggravation "minimal weight" because it had "considered much of [the] same misconduct" in concluding that Hultman was culpable of moral turpitude. (*Id*. at p. 308.) Although this court noted that the court to whom the misrepresentation was made did not rely on the misrepresentation, the court stated that "the misconduct here was serious and extensive, involving repeated self-dealing by a fiduciary. In addition, as a result of respondent's grossly negligent record keeping, an accurate accounting of the transactions in question may never be made." (*Id*. at p. 309.) In view of all of the relevant factors, we concluded that Hultman should be actually suspended for 60 days.

While *Hultman* did not involve an unconscionable fee and while the misconduct in *Hultman* was more extensive and serious (e.g., moral turpitude), the attorney in *Hultman*, like respondent, entered into a business transaction with a client in violation of rule 3-300. However, in the present case, we have a very serious record of prior discipline not present in *Hultman*. On balance, we view *Hultman* as comparable to the present case.

We reject the hearing judge's restitution recommendation. "'*It is clearly contrary to the public policy of this state to condone a violation of the ethical duties which an attorney owes to his client*. [Citation.] In recognition of this premise, "[c]ontracts which violate the canons of

professional ethics of an attorney may for that reason be void." [Citation.]' [Citation.]" (*Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 639-640.) Thus, when an attorney fails to sustain his burden to prove that his contract with a client is fair, "the contract is voidable at the election of the client." (1 Witkin, Cal. Procedure, *supra*, Attorneys, § 120, p. 159.) The State Bar has not shown that any of the clients have elected to void the post-settlement agreements that they entered into with respondent. Moreover, these post-settlement agreements were proved, but were uncharged misconduct, which we considered only for purposes of aggravation. In addition, respondent entered into each of the agreements under a mistaken but honest and reasonable belief that he had the right to negotiate at arms length with his clients. In short, while there might be some instances in which it would further the interests of attorney discipline to recommend that an attorney be required to make restitution in the amount of the gains from an attorney-client business transaction in violation of rule 3-300, whether charged or uncharged, we do not consider this such an instance.

**Conclusion**

After considering all the appropriate factors, including standard 2.7, we conclude that the appropriate level of discipline is two years' stayed suspension, three years' probation, and sixty days' actual suspension.

## DISCIPLINE RECOMMENDATION

We recommend that respondent Ronald Robert Silverton be suspended from the practice of law in the State of California for a period of two years; that execution of the two-year suspension be stayed; and that he be placed on probation for a period of three years on the following conditions.

1. Respondent shall be actually suspended from the practice of law in the State of California during the first sixty days of this probation.

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and all the conditions of this probation.

3. Subject to the proper or a good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.

4. Respondent must report, in writing, to the State Bar's Office of Probation in Los Angeles no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation ("reporting dates"). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of respondent's probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

   (a) in the first report, whether respondent has complied with all the provisions of the State Bar Act, Rules of Professional Conduct of the State Bar, and other terms and conditions of probation since the beginning of this probation; and

   (b) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, Rules of Professional Conduct of the State Bar, and other terms and conditions of probation during the period.

   During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

5. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation in Los Angeles, his current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes (Bus. & Prof. Code, § 6002.1, subd. (a)(1)). Respondent must notify the Membership Records Office and the Office of Probation of any change in his office address or telephone number or his address used for State Bar purposes when he maintains no office no later than 10 days after the change. In addition, respondent must maintain, with the State Bar's Office of Probation, his current home address and telephone number (Bus. & Prof. Code, § 6002.1, subd. (a)(5)). Respondent must notify the Office of Probation of any change in his home address or telephone number no later than 10 days after the change. Respondent's home address and telephone number shall *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).)

6. Within one year after the effective date of the Supreme Court order in this matter, respondent must: (1) attend and satisfactorily complete the State Bar's Ethics School; and (2) provide satisfactory proof of completion of the school to the State Bar's Office of Probation in Los Angeles. This condition of probation is separate and apart from respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing this course. (Accord, Rules Proc. of State Bar, rule 3201.)

7. Within one year after the effective date of the Supreme Court order in this matter, respondent must: (1) attend and satisfactorily complete the State Bar's Client Trust Accounting School; and (2) provide satisfactory proof of completion of the school to the State Bar's Office of Probation in Los Angeles. This condition of probation is separate and apart from respondent's MCLE requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing this course. (Accord, Rules Proc. of State Bar, rule 3201.)

8. Respondent's probation shall commence on the effective date of the Supreme Court order in this matter. And, at the end of the probationary term, if he has complied with the terms

and conditions of probation, the Supreme Court order suspending him from the practice of law for two years shall be satisfied, and the suspension shall terminate.

**PROFESSIONAL RESPONSIBILITY EXAMINATION & COSTS**

We further recommend that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of his passage of that examination to the State Bar's Office of Probation in Los Angeles within that same time period. Finally, we recommend that the costs incurred by the State Bar in this matter be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be payable in accordance with Business and Professions Code section 6140.7.

WATAI, ACTING P. J.*

We Concur:

EPSTEIN, J.
HONN, J.,**sat in place of the Presiding Judge who deemed himself disqualified.

*In accordance with the Rules of Procedure of the State Bar, rule 305(e).

**Judge of the State Bar Court assigned by the Acting Presiding Judge in accordance with the Rules of Procedure of the State Bar, rule 305(e).

**Case Nos. 95-O-10829; 99-O-13251 (Cons.)**

# *In the Matter of Ronald Robert Silverton*

## Hearing Judge

Patrice E. McElroy

## Counsel for the Parties

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|---|---|
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